

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION

NATIONAL SURETY )  
CORPORATION, )  
                  )  
Plaintiff,      )     No. 13 cv 2004 EJM  
vs.                )  
                  )     ORDER  
DUSTEX CORPORATION, MIRON )  
CONSTRUCTION CO., INC., and )  
BOARD OF TRUSTEES OF )  
MUNICIPAL ELECTRIC UTILITY OF )  
THE CITY OF CEDAR FALLS, IOWA, )  
                  )  
Defendants.      )

This matter is before the court on its own motion. Referral to Magistrate Judge to hold evidentiary hearing and file Report and Recommendation (R&R).

This case involves an insurer seeking declaratory judgment that it does not owe indemnity and defense arising from an arbitration award. Jurisdiction under 28 U.S.C. §1332.

This court granted summary judgment to plaintiff on May 9, 2014, declaring that the commercial general liability insurance policy did not cover defendants' loss from the arbitration award, leaving only defendants' equitable affirmative defense of estoppel remaining to be tried. There is no right to a jury trial on this equitable affirmative defense. West v. Devitt, 311 F.2d 787, 788 (8<sup>th</sup> Cir. 1963); Cedarapids, Inc. v. CMI Corp., 1999 U.S. Dist. LEXIS 23450 at \*7 (N.D. Iowa October 26, 1999).

The court refers this matter to the Magistrate Judge under 28 U.S.C. §636(b) to conduct an evidentiary hearing on defendants' affirmative defense of equitable estoppel and file an R&R.

It is therefore

ORDERED

Referred to Magistrate Judge for evidentiary hearing and R&R on affirmative defense.

September 24, 2014

Edward J. McManus  
Edward J. McManus, Judge  
UNITED STATES DISTRICT COURT